IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 21156 of 2007(R)

OS.1722/2001 of III ADDL.M.C.EKM (RENT CONTROL)
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PETITIONER:

GALFAR INDIA PRIVATE LIMITED,
N.H. 47, KUNDANNOOR JUNCTION, KOCHI-682 304,
REP. BY ITS AUTHORIZED SIGNATORY, SRI.K.P.VIJAYAN.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENTS:
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1. **JOSEPH, S/O. THIYO,**
KUMBALARA HOUSE, KUNDANNOOR, MARADU P.O.(DIED).

2. **VIRONY, W/O. T.O.JOSEPH,**
AGED 65 YEARS, KUMBALARA HOUSE, KUNDANOOR,
MARADU P.O.

3. **MARY, D/O. T.D. JOSEPH,**
AGED 40 YEARS, KUMBALARA HOUSE, KUNDANNOOR,
MARADU P.O.

4. **PAUL ALIAS PAULSON, S/O. T.D.JOSEPH,**
AGED 39 YEARS, KUMBALARA HOUSE, KUNDANNOOR,
MARADU P.O.

5. **MARTIN, S/O. T.D. JOSEPH,**
AGED 37 YEARS, KUMBALARA HUSE, KUNDANNOOR,
MARADU P.O.

6. **ROSILY, D/O. T.D.JOSEPH,**
KUMBALARA HOUSE, KUNDANNOOR, MARADU P.O.

7. ALICE, D/O. T.D.JOSEPH,
AGED 30 YEARS, KUMBALARA HOUSE, KUNDANNOOR,
MARADU P.O.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 21156 OF 2007

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Dated this the 10th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order passed by the 3rd Addl. Munsiff, Ernakulam in I.A.9466/06 in O.S.1722/01. The said application was filed for setting aside the Commissioner's plan and report. Allegations are to the effect that the Commissioner has been partisan and he has even corrected the surveyor's sketch submitted by the Taluk Surveyor and therefore the plan and report are liable to be set aside.

2. The Court below disposed of the matter with a two sentence order; "Filing objection. Petitioner may adduce evidence along with suit." I am not able to understand what the learned Munsiff meant by 'filing objection'. At any rate, here is an application for setting aside the Commissioner's plan and report making serious averments against the conduct of the Commissioner and even by stating that he had corrected the sketch supplied by the surveyor. So it is a matter that has to be considered first and most probably if the Commissioner's plan and report are set aside a fresh Commission may have to be issued

and that need not be done after adducing of evidence by the parties in the suit. Therefore, the order under challenge suffers from serious infirmity and accordingly it is set aside. The learned Munsiff is directed to consider I.A.9466/06 afresh after giving sufficient opportunity to both the sides to make their representations and in case evidence is necessary to permit them to adduce evidence so as to dispose of the matter in accordance with law. The Court below shall give notice of the same to the plaintiffs before proceeding with the matter. It goes without saying that the suit can be proceeded with only after the disposal of the above mentioned application.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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